

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DEVON COOPER,

Petitioner,

v.

WILLIAM GITTERE, et al.,

Respondents.

Case No. 3:20-cv-00051-LRH-CLB

ORDER

This is Devon Cooper's *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ The court has reviewed the petition pursuant to Habeas Rule 4, and it will be served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

IT IS THEREFORE ORDERED that the Clerk electronically serve the petition (ECF No. 5) on the respondents.

IT IS FURTHER ORDERED that the Clerk shall add Aaron D. Ford, Nevada Attorney General, as counsel for respondents.

IT IS FURTHER ORDERED that respondents shall file a response to the petition, including potentially by motion to dismiss, within **90 days** of the date of service of the petition, with any requests for relief by petitioner by motion otherwise being subject to

¹ Cooper subsequently submitted a second petition, which was assigned Case No. 3:20-cv-00202-MMD-CLB. That second action has been consolidated with this case (see ECF No. 6).

1 the normal briefing schedule under the local rules. Any response filed shall comply with
2 the remaining provisions below, which are entered pursuant to Habeas Rule 5.

3 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
4 in this case shall be raised together in a single consolidated motion to dismiss. In other
5 words, the court does not wish to address any procedural defenses raised herein either
6 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
7 answer. Procedural defenses omitted from such motion to dismiss will be subject to
8 potential waiver. Respondents shall not file a response in this case that consolidates
9 their procedural defenses, if any, with their response on the merits, except pursuant to
10 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
11 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
12 do so within the single motion to dismiss not in the answer; and (b) they shall
13 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
14 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
15 procedural defenses, including exhaustion, shall be included with the merits in an
16 answer. All procedural defenses, including exhaustion, instead must be raised by
17 motion to dismiss.

18 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
19 shall specifically cite to and address the applicable state court written decision and state
20 court record materials, if any, regarding each claim within the response as to that claim.

21 **IT IS FURTHER ORDERED** that petitioner shall have **45 days** from service of
22 the answer, motion to dismiss, or other response to file a reply or opposition, with any
23 other requests for relief by respondents by motion otherwise being subject to the normal
24 briefing schedule under the local rules.

25 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
26 herein by either petitioner or respondents shall be filed with a separate index of exhibits
27 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
28 be identified by the number of the exhibit in the attachment.

DATED this 13th day of May, 2020.


LARRY R. HICKS
UNITED STATES DISTRICT JUDGE